

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.:** 2007-0510-MWD-E **TCEQ ID:** RN102078169 **CASE NO.:** 33163  
**RESPONDENT NAME:** City of Kennard

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> <b>1660 AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS ORDER FOLLOWING SOAH HEARING</b>
<input type="checkbox"/> <b>FINDINGS DEFAULT ORDER</b>	<input type="checkbox"/> <b>SHUTDOWN ORDER</b>	<input type="checkbox"/> <b>IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER</b>
<input type="checkbox"/> <b>AMENDED ORDER</b>	<input type="checkbox"/> <b>EMERGENCY ORDER</b>	
<b>CASE TYPE:</b>		
<input type="checkbox"/> <b>AIR</b>	<input type="checkbox"/> <b>MULTI-MEDIA (check all that apply)</b>	<input type="checkbox"/> <b>INDUSTRIAL AND HAZARDOUS WASTE</b>
<input type="checkbox"/> <b>PUBLIC WATER SUPPLY</b>	<input type="checkbox"/> <b>PETROLEUM STORAGE TANKS</b>	<input type="checkbox"/> <b>OCCUPATIONAL CERTIFICATION</b>
<input checked="" type="checkbox"/> <b>WATER QUALITY</b>	<input type="checkbox"/> <b>SEWAGE SLUDGE</b>	<input type="checkbox"/> <b>UNDERGROUND INJECTION CONTROL</b>
<input type="checkbox"/> <b>MUNICIPAL SOLID WASTE</b>	<input type="checkbox"/> <b>RADIOACTIVE WASTE</b>	<input type="checkbox"/> <b>DRY CLEANER REGISTRATION</b>
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Kennard Wastewater Treatment Facility, located on the southeast side of Kennard on a 27 acre tract, on Elm Creek between Pine Prairie Road and Farm-to-Market Road 357, Houston County</p> <p><b>TYPE OF OPERATION:</b> Wastewater treatment plant</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on July 30, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Deana Holland, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2504; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468  <b>Respondent:</b> The Honorable Bill Thomas, Mayor, City of Kennard, Post Office Box 115, Kennard, Texas 75847  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> February 28, 2007</p> <p><b>Date of NOE Relating to this Case:</b> March 22, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a routine records review. Two violations were documented.</p> <p><b>WATER</b></p> <p>1) Failure to comply with the permitted effluent limits [30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a), TPDES Permit No. 11474001, Effluent Limitations and Monitoring Requirements No.1].</p> <p>2) Failure to submit the discharge monitoring report ("DMR") parameter data for the minimum single grab dissolved oxygen for the monitoring period ending February 28, 2006 [30 TEX. ADMIN. CODE § 305.125(17) and TPDES Permit No. 11474001, Monitoring and Reporting Requirements No. 1].</p>	<p><b>Total Assessed:</b> \$4,200</p> <p><b>Total Deferred:</b> \$840  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$3,360</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. On June 1, 2006, became compliant with the permit effluent limits; and</p> <p>b. On April 11, 2007, submitted the DMR parameter data for the dissolved oxygen minimum for the monitoring period ending February 28, 2006.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 17, 2006

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	26-Mar-2007	<b>Screening</b>	30-Mar-2007	<b>EPA Due</b>	
	<b>PCW</b>	11-Apr-2007				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	City of Kennard		
<b>Reg. Ent. Ref. No.</b>	RN102078169		
<b>Facility/Site Region</b>	10-Beaumont	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	33163	<b>No. of Violations</b>	2
<b>Docket No.</b>	2007-0510-MWD-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Enf. Coordinator</b>	Deana Holland
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** \$2,100

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **110% Enhancement** **Subtotals 2, 3, & 7** \$2,310

Notes

An 110% enhancement is recommended for having 17 NOV's for self-reported effluent data violations, one NOV with a same or similar violations, and one Agreed Order within the last five years.

**Culpability**

No

**0% Enhancement**

**Subtotal 4** \$0

Notes

The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply**

**10% Reduction**

**Subtotal 5** \$210

Before NOV

NOV to EDP RP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes

Became compliant with permitted effluent limitations on June 1, 2006. On April 11, 2007 the Respondent submitted their dissolved oxygen minimum at Outfall 001A for the monitoring period ending February 28, 2006.

**0% Enhancement\***

\*Capped at the Total EB \$ Amount

**Subtotal 6** \$0

Total EB Amounts \$85

Approx. Cost of Compliance \$5,050

### SUM OF SUBTOTALS 1-7

**Final Subtotal** \$4,200

### OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

**Adjustment** \$0

Notes

**Final Penalty Amount** \$4,200

### STATUTORY LIMIT ADJUSTMENT

**Final Assessed Penalty** \$4,200

### DEFERRAL

**20%**

Reduction

**Adjustment** -\$840

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

### PAYABLE PENALTY

\$3,360

Screening Date: 30-Mar-2007

Docket No. 2007-0510-MWD-E

PCW

Respondent: City of Kennard

Policy Revision 2 (September 2002)

Case ID No. 33163

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN102078169

Media [Statute]: Water Quality

Enf. Coordinator: Deana Holland

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	18	90%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 110%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance History Notes

An 110% enhancement is recommended for having 17 NOVs for self-reported effluent data violations, one NOV with a same or similar violations, and one Agreed Order within the last five years.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 110%

Screening Date 30-Mar-2007

Docket No. 2007-0510-MWD-E

PCW

Respondent City of Kennard

Policy Revision 2 (September 2002)

Case ID No. 33163

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN102078169

Media [Statute] Water Quality

Enf. Coordinator Deana Holland

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1), and Tex. Water Code § 26.121(a), TPDES Permit No. 11474001, Effluent Limitations and Monitoring Requirements No.1

Violation Description Failed to comply with the permitted effluent limits as documented during a record review conducted on February 28, 2007. See attached effluent violation table.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			x	10%
Potential				

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

A simplified model was used to evaluate biochemical oxygen demand ("BOD") to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 2

120 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,000

Two quarterly events are recommended.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$82

Violation Final Penalty Total \$4,000

This violation Final Assessed Penalty (adjusted for limits) \$4,000

## Economic Benefit Worksheet

Respondent City of Kennard  
 Case ID No. 33163  
 Reg. Ent. Reference No. RN102078169  
 Media Water Quality  
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$5,000	1-Feb-2006	1-Jun-2006	0.3	\$82	n/a	\$82

Notes for DELAYED costs

Estimated costs of evaluating the causes of the effluent noncompliances is \$5,000. Date required is the beginning of the effluent noncompliances and the final date is the date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$82

Screening Date 30-Mar-2007

Docket No. 2007-0510-MWD-E

PCW

Respondent City of Kennard

Policy Revision 2 (September 2002)

Case ID No. 33163

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN102078169

Media [Statute] Water Quality

Enf. Coordinator Deana Holland

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 305.125(17) and TPDES Permit No. 11474001, Monitoring and Reporting Requirements No. 1

Violation Description Failed to submit the discharge monitoring report ("DMR") parameter data for the minimum single grab dissolved oxygen for the monitoring period ending February 28, 2006.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
			x

Percent 1%

Matrix Notes

At least 70% of the permit requirement was met.

Adjustment \$9,900

\$100

## Violation Events

Number of Violation Events 1

387 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$100

One single event is recommended for the DMR for the month of February 2006.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$200

This violation Final Assessed Penalty (adjusted for limits) \$200

## Economic Benefit Worksheet

**Respondent** City of Kennard  
**Case ID No.** 33163  
**Reg. Ent. Reference No.** RN102078169  
**Media** Water Quality  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$50	20-Mar-2006	11-Apr-2007	1.1	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to submit missing DMRs. Date required is the date the DMR data was due and the final date is the date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$50

**TOTAL**

\$3



**Effluent Violation Table**  
 City of Kennard  
 TPDES Permit No. 11474001  
 Docket No. 2007-0510-MWD-E

Permitted Effluent Limits Outfall	Monitoring Period End Date			
	02/28/2006	03/31/2006	04/30/2006	05/31/2006
<b>BOD</b> Daily Avg. concentration 30 mg/L	36.7	39.7	57.7	34.4

BOD=Biochemical Oxygen Demand



# Compliance History

Customer/Respondent/Owner-Operator:	CN600685036	City of Kennard	Classification: AVERAGE	Rating: 1.79
Regulated Entity:	RN102078169	CITY OF KENNARD	Classification: AVERAGE	Site Rating: 1.79
ID Number(s):	WASTEWATER	PERMIT	WQ0011474001	
		PERMIT	TPDES0056596	
	WASTEWATER	PERMIT	TX0056596	
Location:	Located on the southeast side of Kennard on a 27 acre tract, Rating Date: 9/1/2006 Repeat Violator: NO on Elm Creek between Pine Prairie Road and Farm-to-Market Road 537 in Houston County, Texas			
TCEQ Region:	REGION 10 - BEAUMONT			
Date Compliance History Prepared:	March 30, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 30, 2002 to March 30, 2007			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Deana Holland Phone: 239-2504

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 05/09/2005 ADMINORDER 2004-1259-MWD-E  
 Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]  
 Rqmt Prov: Effluent Limits PERMIT  
 Description: Failure to comply with permit effluent limits at Outfall 001A for BOD daily average concentration and TSS daily average loading, as documented by a TCEQ record review of self-reported data.

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	05/10/2002	(188357)
2	06/10/2002	(188360)
3	08/14/2002	(188363)
4	08/15/2002	(188365)
5	10/24/2002	(188368)
6	10/30/2002	(188371)
7	01/09/2003	(188373)
8	01/09/2003	(188376)
9	02/05/2003	(188379)
10	02/05/2003	(188382)
11	06/05/2003	(308280)
12	06/09/2003	(308286)
13	06/30/2003	(308282)
14	06/30/2003	(308284)
15	08/18/2003	(308290)
16	09/28/2003	(308291)
17	10/07/2003	(308288)
18	10/13/2003	(308289)
19	01/12/2004	(308292)

20	01/12/2004	(308293)
21	01/12/2004	(308294)
22	01/12/2004	(384712)
23	02/11/2004	(308295)
24	05/24/2004	(308281)
25	06/22/2004	(308283)
26	06/22/2004	(308285)
27	06/28/2004	(357196)
28	06/28/2004	(308287)
29	07/08/2004	(276926)
30	08/16/2004	(357198)
31	10/14/2004	(357197)
32	01/14/2005	(384713)
33	01/17/2005	(384714)
34	01/17/2005	(384715)
35	02/21/2005	(422678)
36	03/14/2005	(384711)
37	04/12/2005	(422675)
38	04/15/2005	(374955)
39	05/23/2005	(422676)
40	06/13/2005	(422677)
41	07/22/2005	(443584)
42	08/22/2005	(443585)
43	09/08/2005	(404623)
44	09/16/2005	(443586)
45	10/17/2005	(473590)
46	11/21/2005	(473591)
47	12/19/2005	(473592)
48	01/13/2006	(473593)
49	02/27/2006	(473588)
50	03/17/2006	(473589)
51	04/19/2006	(501673)
52	05/25/2006	(501674)
53	06/22/2006	(501675)
54	07/20/2006	(523938)
55	08/30/2006	(523939)
56	09/21/2006	(523940)
57	10/19/2006	(548953)
58	12/07/2006	(548954)
59	12/22/2006	(548955)
60	01/24/2007	(548956)
61	03/22/2007	(542553)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	08/31/2002	(188371)		
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	09/30/2002	(188373)		
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	11/30/2002	(188379)		
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	02/28/2003	(308282)		
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	06/30/2003	(308289)		
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]			

Description: Failure to meet the limit for one or more permit parameter  
 Date: 08/31/2003 (308291)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 09/30/2003 (308292)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 10/31/2003 (308293)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 11/30/2003 (308294)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 03/31/2004 (308285)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 08/31/2004 (384712)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 09/30/2004 (384713)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 11/30/2004 (384715)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 04/13/2005 (374955)  
 Self Report? NO Classification: Moderate  
 Rqmt Prov: PERMIT EL&MR 1  
 Description: Failure by the City of Kennard to comply with effluent limitations for Biochemical Oxygen Demand.

Self Report? NO Classification: Minor  
 Rqmt Prov: PERMIT M&RR 1  
 Description: Failure by the City of Kennard to submit the December 2004 Discharge Monitoring Report (DMR) before the 20th day of the following month.

Self Report? NO Classification: Moderate  
 Rqmt Prov: PERMIT M&RR 7c  
 Description: Failure by the City of Kennard to submit in writing a report to the Region 10 office and the Manager of the Water and Multimedia Section (MC 149) of the Enforcement Division for exceeding any permit limitation by greater than 40% within 5 days of becoming aware.

Date: 02/28/2006 (473589)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 03/31/2006 (501673)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 04/30/2006 (501674)  
 Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]  
Description: Failure to meet the limit for one or more permit parameter  
Date: 05/31/2006 (501675)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF KENNARD  
RN102078169**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2007-0510-MWD-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of Kennard ("the City") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates a wastewater treatment plant located on the southeast side of Kennard on a 27 acre tract on Elm Creek between Pine Prairie Road and Farm-to-Market Road 357 in Houston County, Texas (the "Facility").
2. The City has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
4. The City received notice of the violations alleged in Section II ("Allegations") on or about March 27, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.





6. An administrative penalty in the amount of Four Thousand Two Hundred Dollars (\$4,200) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The City has paid Three Thousand Three Hundred Sixty Dollars (\$3,360) of the administrative penalty and Eight Hundred Forty Dollars (\$840) is deferred contingent upon the City's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the City has implemented the following corrective measures at the Facility:
  - a. On June 1, 2006, became compliant with the permit effluent limits; and
  - b. On April 11, 2007, submitted the DMR parameter data for the dissolved oxygen minimum for the monitoring period ending February 28, 2006.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the City is alleged to have:

1. Failed to comply with the permitted effluent limits, in violation of 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a), Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 11474001, Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on February 28, 2007, and as shown in the following table:



Effluent Violation Table City of Kennard TPDES Permit No. 11474001 Docket No. 2007-0510-MWD-E				
Permitted Effluent Limits Outfall 001	Monitoring Period End Date			
	02/28/2006	03/31/2006	04/30/2006	05/31/2006
<b>BOD</b> Daily Avg. concentration 30 mg/L	36.7	39.7	57.7	34.4

BOD=Biochemical Oxygen Demand

2. Failed to submit the discharge monitoring report ("DMR") parameter data for the minimum single grab dissolved oxygen for the monitoring period ending February 28, 2006, in violation of 30 TEX. ADMIN. CODE § 305.125(17) and TPDES Permit No. 11474001, Monitoring and Reporting Requirements No. 1, as documented during a record review conducted on February 28, 2007.

### III. DENIALS

The City generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Kennard, Docket No. 2007-0510-MWD-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the operations referenced in this Agreed Order.



3. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

8/23/2007  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

5-12-07  
Date

Bill Thomas  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
City of Kennard

Mayor  
\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

